STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Enbridge Pipelines (Illinois), L.L.C.,	)	
	)	07-0446
Application Pursuant to Section 8-503, 8-509 and	)	
15-401 of the Public Utilities Act/The Common	)	
Carrier by Pipelines Law to Construct and Operate	)	
a Petroleum Pipeline and When Necessary to Take	)	
Private Property As Provided by the Law of	)	
Eminent Domain.	)	

PLIURA INTERVENORS'
MOTION TO COMPEL AND MOTION TO VACATE
FILING DEADLINE AND HEARING DATE

NOW COME Pliura Intervenors, by and through their joint counsel, Thomas J. Pliura, M.D., and respectfully moves the honorable Administrative Law Judge for an order compelling Applicant to fully and completely respond to Pliura Intervenors' Data Requests, submitted August 11, 2014 and to vacate the deadline for Intervenors to submit testimony and exhibits and vacate the date for evidentiary hearing. In support of said motion, movants respectfully state as follows:

1. On June 26, 2014, the Commission reopened the above-referenced proceedings, on Applicant's motion, for the purpose of addressing, inter alia, whether the Final Order issued July 8, 2009 should be amended to allow Applicant to construct a 24-inch diameter pipeline primarily for the transportation of light oil rather than the previously approved 36-inch diameter pipeline primarily for the purpose of transporting Canadian Heavy Crude.
2. On July 28, 2014, the Hon. ALJ entered an order requiring Applicant to respond to data requests and similar discovery requests within 14 days of receipt. The Order also called for Intervenors to file their testimony and exhibits by August 27, 2014.

3. On August 11, 2014, Movants served Applicant with a set of fifteen data requests, a copy of which is attached hereto and incorporated herein as **Exhibit A**.
4. On August 25, 2014, on the final date within which Applicant could timely respond, Applicant served movant with a response to the data requests that is largely non-responsive on certain important issues. A copy of said response is attached hereto as **Exhibit B**[1].
5. Pursuant to 83 Ill. Adm. Code 200.340, "[i]t is the policy of the Commission to obtain full disclosure of all relevant and material facts to a proceeding. Further, it is the policy of the Commission to encourage voluntary exchange by the parties and staff witnesses of all relevant and material facts to a proceeding through the use of requests for documents and information…"
6. Notwithstanding this policy of openness, Applicant has refused to answer most of the discovery requests posed by Turner Intervenors and by Intervenor McLean County, has provided largely superficial and non-responsive answers to Pliura Intervenors' data requests, and produced no documents whatsoever.
7. It is clear that Applicant desires to so severely restrict the ability of Intervenors to challenge its motion to amend that in the absence of an order compelling discovery, meaningful inquiry and an evidence-based ruling are hopeless.
8. Under Applicant's self-serving interpretation of relevance, the instant proceedings would amount to a mere "rubber-stamp" approval of the motion to amend after perfunctory proceedings.
9. Specifically, Pliura Intervenors object to Applicant's responses as follows:

[1] Applicant's Response is errantly styled "RESPONSES OF ENBRIDGE PIPELINES (ILLINOIS) L.L.C. TO TURNER INTERVENORS' DATA REQUESTS DATED AUGUST 11, 2014".

a. With respect to Request No. 1, Applicant alleges in a sworn response that a decision to alter the project to a 24-inch pipeline was not made until March 2014. Very respectfully, it appears that this sworn answer is false. Attached hereto and incorporated herein is Applicant's own "open season" press release dated December 12, 2012 which identify the project as a 24-inch pipeline. (See **Exhibit C** attached). A Second Open season was conducted in June 2013 and again the project was identified as a 24-inch pipeline. (See **Exhibit D** attached hereto). Applicant clearly knew the results of its open seasons by July 19, 2013 at the very latest, when the second open season closed. This project has been a 24-inch pipeline since at least December 12, 2012 and this fact was not disclosed to the Commission or Intervenors. Intervenors are entitled to full discovery on this point.

b. With respect to Request No. 2, Applicant has refused to produce any documents whatsoever related to its notification to the Commission of the change in pipe diameter and has failed or refused to identify the withheld documents or submit them for *in camera* inspection. Such documentation is important to demonstrate whether Applicant's motion to amend and filing in 13-0446 were made in good faith and timely.

c. Pliura Intervenors assert that the answer to request No. 3 is intentionally evasive and non-responsive. Applicant admits that it considered changing the pipe diameter in 2012 but made no mention of this in its 2013 Application. As shown above and in Exhibits C and D hereto, the assertion by Applicant that the decision to change the pipe diameter did not occur until the very day it placed a purchase

order for 24 inch pipe on March 11, 2014 is, at best, absurd, and at worst, an intentional obfuscation. Intervenors are entitled to full discovery on this point.

d. The same is true for Applicant's evasive non-answer to Request No. 4.

e. With respect to Requests 5, 6, 7, and 8, there is little chance that anyone that has been even tangentially involved in this matter would accept Applicant's denial that the evidence in the 07-0446 proceedings that resulted in the Final Order was premised upon Applicant's assertions that the SAX would be a 36 inch diameter pipeline with a 400,000 bpd capacity to primarily transport Canadian Heavy Crude to PADD II refineries that had retooled to accept this product. To now pretend otherwise insults the dignity of these proceedings. There can be no legitimate dispute that a substantial change in the capacity of the pipeline and the intended product drastically alters, if not moots, all of the prior evidence of record as to public benefit of the project. It could conceivably be, of course, that this reconfigured project still has some measure of public benefit. But the Commission is not permitted to assume that fact simply because Applicant wishes to avoid the issue. Intervenors are entitled to the information sought. And, quite frankly, without it being of record, Applicant cannot prevail on its motion because any final order that permits the amendment without evidence of public benefit would not survive appeal.

f. Applicant's responses to Requests 9 and 10 are non-responsive to the questions posed.

g. Applicant's responses to Requests 11, and 12 are non-responsive. Applicant misrepresents the requirements of 49 U.S.C. § 16103, which is entirely irrelevant

to this request. Further, confidentiality agreements are not a bar to discovery. The relationship between Marathon and Applicant, as well as the shipper commitments entered into for the SAX are directly relevant here. On information and belief, Pliura Intervenors strongly suspect that the agreements between Marathon (and its subsidiaries) and Applicant with respect to the SAX render the proposed project a "contract line" and not a common carrier. Given Applicant's long history of evasiveness and obfuscation in these proceedings, it would be highly improper to permit it to protect this issue from inquiry under a self-serving interpretation of the Commission's order on reopening.

Further on this point, examine the language of the Open Season notices at Exhibits C and D. The Anchor shipper (Marathon) had committed to sufficient volume to support a 24-inch pipeline. After two open seasons, the project remains a 24-inch pipeline. This suggests the project is not truly a common carrier as the Anchor shipper has already committed to the full capacity of the line. Intervenors are entitled to full discovery on this issue.

10. Pursuant to 83 Ill. Adm. Code 200.350, movant attempted to consult with counsel for Applicant in an attempt to resolve this discovery dispute, but counsel for Applicant refused to discuss the matter. Any further attempts would be futile.
11. Due to the short time frame imposed by the July 28, 2014 scheduling order, it is impossible for Pliura Intervenors to meaningfully comply with the August 27, 2014 deadline to file testimony and exhibits due to Applicant's refusal to fully and timely respond to movant's data requests.

12. Pursuant to 83 Ill. Adm. Code 200.420, the appropriate remedy to address Applicant's refusal to respond to data requests is a suspension of further proceedings until compliance is obtained.

WHEREFORE, Pliura Intervenors respectfully pray the Hon. Administrative Law Judge issue an order compelling Applicant to fully and completely answer all data requests and to submit any withheld documents to the ALJ for *in camera* inspection. Movants further pray the Hon. Administrative Law Judge vacate the August 27, 2014 deadline for Intervenors to file their testimony and exhibits, vacate the September 11, 2014 hearing date and, pursuant to section 200.420 of the Code, suspend all further proceedings herein until applicant has fully answered all data requests.

Respectfully submitted this 26th day of August, 2014

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PROOF OF SERVICE

The undersigned certifies that on this 26th day of August, he served a copy of the foregoing document upon the individuals on below, by electronic mail.

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